

ADVISORY OPINION NO. 99-02

Issued On February 4, 1999 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Multicounty Vocational School Instructor** asks whether it would be a violation of the Ethics Act or of WV Code 61-10-15 for him bid on the School's sale of a modular home constructed by its students as an instructional project.

FACTS RELIED UPON BY THE COMMISSION

The Vocational School conducts classes in Building Construction. As an instructional project, the Building Construction class constructs a modular home, which is sold by the School once construction is completed. The sale is made by sealed bid after public advertisement, with a minimum acceptable bid based on the cost of materials plus a markup. The School's Administrative Council, of which the Instructor is not a member, selects the successful bidder and makes the sale.

The Instructor, one of two who conduct the Building Construction class which is building a modular home, is interested in bidding on the home. He asks if it would be a violation for him to submit a bid or for the School to award him the bid, if he is the highest bidder.

The Building Construction class instructors are responsible for selecting the type of home to be built and for making design and material decisions for the entire construction project.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(d)(1) provides in pertinent part that... no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control...

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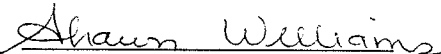
Both the Ethics Act and WV Code 61-10-15 have prohibitions against public servants having private financial interests in public contracts, purchases or sales over which their public position gives them a degree of authority or control. WV Code 61-10-15 is a criminal misdemeanor statute which applies exclusively to county public servants - it has no application to State or municipal public servants.

The **Ethics Act** prohibits public servants from being a party to or having a personal financial interest in a public contract, purchase or sale that their public position gives them the authority to (1) award or (2) control. The sale of the modular home is a public transaction in which the School's instructors may not have a personal financial interest, if they have the authority to award or control the transaction.

It is clear that the instructors do not have the authority to award a contract of sale for the home. However, they do exercise considerable control over the construction of the home. They select the type of home to be built and decide the type and quality of materials to be used in its construction. Although there is no suggestion they have done so, their positions do give them the ability to fashion a home to satisfy their own personal needs and tastes.

The Commission finds that the instructors' control over the construction process gives them the type of control over the sale of the home which subjects them to the prohibition against being a party to the sale of the home. It would be a violation of the Ethics Act for either of the instructors to buy the home.

In view of the Commission's finding in regard to the provisions of the Ethics Act, it is unnecessary for the Commission to decide whether the instructor's purchase of the home would be a violation of WV Code 61-10-15.


Vice Chairman